IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.1365 of 2003
To
FIRST APPEAL No.1375 of 2003
With
FIRST APPEAL No.90 of 2004
To
FIRST APPEAL No.100 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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DY.GENERAL MANAGER - Appellant
Versus
KESARSING RAISING RAJ & ORS. - Respondents

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Appearance :
FIRST APPEAL Nos.1365 TO 1375 OF 2003
MS KJ BRAHMBHATT for Appellant.
MR AJ PATEL for Original Claimants.
MR SS PATEL, AGP for Respondent Nos.2 & 3.
FIRST APPEAL Nos.90 TO 100 Of 2004
MR AJ PATEL for Appellants-Claimants.
MR SS PATEL AGP for Respondent Nos.1 and 2.
MR RR MARSHALL for Respondent No.3 - Acquiring Body.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 18/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The abovenumbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated February 14, 2002 rendered by the learned 3rd Joint Civil Judge (S.D.), Bharuch, in Land Reference Case Nos.1450 of 1990 to 1458 of 1990 and Land Reference Case Nos.427 of 1992 to 428 of 1992 by which the claimants are awarded additional amount of compensation at the rate of Rs.31/- per square metre for their acquired lands over and above the compensation of Rs.7/- per square metre awarded by the Special Land Acquisition Officer.

2. A proposal was received by the State Government to acquire lands of Village Vagra for the public purpose of O.N.G.C. Project (Vagra Control Centre for O.N.G.C.). On perusal of the said proposal, the State Government was satisfied that the lands of Village Vagra, Taluka Vagra, District: Bharuch, were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the official gazette on April 28, 1989. The landowners, whose lands were sought to be acquired, were served with the notices under Section 4 of the Act. They filed their objections against the

proposed acquisition. After considering their objections, the Special Land Acquisition Officer submitted his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village Vagra, which were specified in the notification published under Section 4 of the Act were needed for O.N.G.C. Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on July 29, 1989. The interested persons were thereafter served with the notices for determining compensation payable to them. After considering the materials placed before him, the Special Land Acquisition Officer made award dated June 20, 1990 and offered compensation to the claimants at the rate of Rs.7/- per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to District Court, Bharuch, which were numbered as Land Reference Case Nos.1450 of 1990 to 1458 of 1990 and 427 of 1992 to 428 of 1992. Before the Reference Court, the claimants claimed compensation at the rate of Rs.50/- per square metre.

3. On behalf of the claimants, seven witnesses, namely; (1)

Gamansang Bhavansang at Exh.59; (2) Hanumanbhai Ishwarbhai Patel at Exh.61; (3) Sanjaykumar Krishnakantbhai Patel at Exh.89; (4) Omprakash Dahyabhai Pandya at Exh.116; (5) Raisangbhai Babubhai Makwana at Exh.125; (6) Ramanbhai Pujabhai Vankar at Exh.133; and, (7) Mahendrabhai Manubhai Nanavati at Exh.135, were examined. The claimants also produced documentary evidence for consideration of the Reference Court. On behalf of the acquiring body, two witnesses, namely; (1) Harishchandra Kanaiyalal Shah at Exh.140; and, (2) Purshottambhai Haribhai Chotaliya at Exh.141, were examined.

4. The Reference Court noted that no evidence of comparable sale or other evidence for computation of the market value was produced by the claimants and that enhanced compensation was claimed on yield basis. On appreciation of evidence adduced, namely, 7/12 extracts produced at Exhs.15 to 28; 7/12 extracts of well produced at Exhs.29 to 42; price of green-tuver per quintal at Rs.778/- in the year 1985-90 indicated in Exh.50; price-list of dry-tuver per quintal at the rate of Rs.815/- in the year 1985-90 indicated in Exh.51; bills of dry-tuver produced at Exhs.62 to 88; other bills of dry-tuver produced at Exhs.91 to 108, the Reference Court held that each claimant was able to raise crop of 30 quintals of green-tuver in a year, price of which per quintal was Rs.778/- and, therefore, income from green-tuver per year per acre was Rs.23,340/-. The learned Judge of the Reference Court

was further of the opinion that each claimant was able to raise 10 quintals of dry-tuver per year per acre, price of which was Rs.815/- per quintal, and, therefore, income realized from sale of dry-tuver by each claimant per year was Rs.8,150/- per acre. The Reference Court was of the opinion that 50% should be deducted as the cost of cultivation from the income derived from sale of dry & green tuver. Accordingly, the Reference Court was of the opinion that net profit per acre was Rs.15,754/- per year. The Reference Court was of the opinion that proper multiplier to be applied for capitalization was 10. Applying the said multiplier, the Reference Court held that each claimant was entitled to Rs.39.36 ps. per square metre as total compensation payable under the Act. The learned Judge of the Reference Court rounded off the figure and in ultimate analysis held that the claimants were entitled to Rs.38/- per square metre as compensation. As the claimants were awarded compensation at the rate of Rs.7/- per square metre by the Special Land Acquisition Officer, the learned Judge of the Reference Court allowed the references partly by awarding additional compensation at the rate of Rs.31/- per square metre to the claimants vide common judgment and award dated February 14, 2002, which has given rise to abovenumbered appeals.

5. Ms.K.J.Brahmbhatt, learned advocate for the appellant in First Appeal No.1365 of 2003 to 1375 of 2003, as well as Mr.R.R.Marshall, learned counsel appearing for the acquiring body

i.e. the respondent No.3 in First Appeal Nos.90 of 2004 to 100 of 2004, contended that the award passed by the Reference Court should be set aside and the award of the Special Land Acquisition Officer, which is based on sale deeds, should be confirmed by this Court. In the alternative, it was argued that no evidence worth the name has been adduced by the claimants to indicate that as to what was the quantity of green-tuver grown on the acquired lands nor evidence is adduced to show as to whom the sale of green-tuver was effected and at what rate, as a result of which the price of green-tuver calculated in the additional compensation awarded by the Reference Court should be excluded while determining the lands acquired and the compensation payable to the claimants, as determined by the Reference Court, should be suitably reduced.

6. Mr.A.J.Patel, learned counsel for the claimants, contended that the award of the Special Land Acquisition Officer can hardly be regarded as a relevant piece of evidence and as witnesses examined by the acquiring body had not produced any sale deed for consideration of the Court, the offer of compensation made by the Special Land Acquisition Officer should not be upheld by this Court. It was asserted that the claimants have adduced reliable evidence regarding quantity of dry-tuver grown on the lands acquired as well as the price fetched by sale of the same to Sangh and, therefore, the assertion made by the claimants that they were taking two crops of green-tuver in a year, should be accepted

by the Court. What was maintained before the Court was that in absence of any documentary evidence, the claim advanced by the claimants on oath before the Reference Court that they were growing 30 quintals of green-tuver on the acquired lands and were selling the same at the rate indicated in Exh.50, should be accepted by this Court in view of the principles laid down in **State of Gujarat & Ors. vs. Rama Rana & Ors., (1997) 2 SCC 693,** and the argument advanced on behalf of the acquiring body that the price of green-tuver included in the compensation determined by the Reference Court should be excluded, should not be accepted. It was emphasised that while determining the price of lands acquired, the Reference Court has not taken into consideration the potentiality of the lands for residential or commercial use and, therefore, after assessing building and industrial potentiality of the lands acquired at 20% and deducting therefrom 1/3 expenditure, which may be incurred towards development of the lands, the claimants should be awarded additional compensation of Rs.4.47/- per square metre. It was stressed that a just amount of compensation has been determined by the Reference Court and as no ground is made out by the learned counsel for the acquiring body to interfere with the same in the instant appeals filed by the acquiring body, the appeals, which lack merits, should be dismissed.

7. In First Appeal Nos.90 of 2004 to 100 of 2004 filed by

the claimants, it was argued by Mr.A.J.Patel, learned counsel for the claimants, that in view of satisfactory evidence led by the claimants, the Reference Court was not justified in awarding compensation at the Rs.38/- per square metre and that the claimants should have been awarded compensation at the rate of Rs.50/- per square metre. In answer to this plea, what was maintained by the learned counsel for the acquiring body was that the acquiring body has made out good case in First Appeal Nos.1365 of 2003 to 1375 of 2003 to reduce the amount of compensation determined by the Reference Court as payable to the claimants and, therefore, there is no question of awarding compensation to the claimants at the rate of Rs.50/- per square metre.

8. This Court has heard Ms.K.J.Brahmbhatt, learned advocate for the appellant-acquiring body in First Appeal Nos.1365 of 2003 to 1375 of 2003, and Mr.R.R.Marshall, learned counsel appearing for the acquiring body in First Appeal Nos.90 of 2004 to 100 of 2004 as well as Mr.A.J.Patel, learned advocate appearing for the original claimants, and Mr.S.S.Patel, learned Asst. Govt. Pleader, at length and in great detail. This Court has also considered the documents forming part of the Reference Court.

9. The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) of the Act and the

methods of valuation may be; (1) opinion of experts; (2) the prices paid within a reasonable time in *bona fide* transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase is not resorted to if there is evidence of comparable sales or other evidence for computation of the market value.

10. The contention that the award of the Special Land Acquisition Officer, which has taken into consideration the sale deeds, should be confirmed by this Court, cannot be accepted. It is well to remember that the award made by the Special Land Acquisition Officer under Section 11 of the Act is nothing but an offer. Further, the award by itself has no evidenciary value. It is true that while determining the market value of the lands acquired, the Special Land Acquisition Officer has referred to certain sale deeds. However, during the course of examination of certain witnesses by the acquiring body, those sale deeds could not be brought on record for consideration of the Court. If the acquiring body and the government were of the view that the market value of the lands acquired should be assessed on the basis of sale deeds, nothing prevented them from producing the sale deeds on record of this case. Under the circumstances, the plea that on the basis of

sale deeds referred to by the Special Land Acquisition Officer in his award, determination of the market value arrived at by the Reference Court should be set aside, has no substance and is hereby rejected.

11. In this case, the claimants have not produced any evidence relating to *bona fide* transactions of purchase or sales of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages. The claimants claimed compensation on yield basis and after considering the evidence adduced by the claimants, the Reference Court has awarded additional compensation at the rate of Rs.31/- per square metre to the claimants.

12. From the testimony of witness, Gamansang Bhavansang, recorded at Exh.59, it is evident that the claimants were taking crops of tuver, cotton, wheat, juvar, pulses, etc. on the lands acquired. However, no documentary evidence could be produced by the claimants to establish that the crops of cotton, wheat, juvar, etc. were grown on the acquired lands. The claimants have adduced the evidence indicating that crop of dry-tuver was sold to Vagra Taluka Cooperative Marketting & Process Society Limited for the years 1985 to 1990. This is evident from the contents of Exhibit 90. Again, they have also produced certified copies of the bills at Exhs.62 to 88 evidencing sales of dry-tuver by different claimants. Further, the claimants have produced Exhibits

91 to 108, which are bills relating to sales of dry-tuver issued to the claimants by Vagra Taluka Cooperative Marketting & Processing Society Limited. The fact that dry-tuver was grown by the claimants and sold to Sangh is not disputed either on behalf of the acquiring body or the State Government. It may be mentioned that tuver is a crop, which after first picking grows automatically enabling the grower to have advantage of second picking after which the pulses in the form of dry-tuver would be available. The argument on behalf of the acquiring body that in absence of evidence adduced by the claimants indicating the quantity of the green tuver grown and price it had fetched in the open market, the market value determined by the Reference Court should be reduced down proportionately, cannot be accepted because existence of dry-tuver presupposes existence of green-tuver. It is true that the claimants have not led any definite evidence regarding quantity of green-tuver, which was grown on the acquired lands and at what price the quantity grown was sold. Further, when the compensation is determined on yield basis, some reasonable inferences will have to be drawn by the Court on the basis of proved facts. The case of the claimants before the Reference Court was that the claimants were growing 40 quintals of green-tuver and 14 quintals of dry-tuver in a year. However, the Reference Court was of the opinion that the figures stated regarding growth of green & dry-tuver by the claimants were exaggerated and, therefore, the Reference Court was of the view that the evidence led by the claimants

established that only 10 quintals of dry-tuver were grown by the claimants on the acquired lands. On the basis of quantity of dry-tuver grown, the Reference Court has deduced that the claimants were growing 30 quintals of green-tuver on the lands acquired and worked out compensation payable to them. In **State of Gujarat & Ors. vs. Rama Rana & Ors. (supra),** the claimants had not produced statistics from Agriculture Department as to nature of crops and price prevailing at that time. The Government had also failed to adduce any evidence in that behalf. The question before the Court was that in absence of best evidence, oral evidence of the witnesses examined on behalf of the claimants merited rejection. After considering the relevant principles, the Supreme Court has held that the Court has statutory duty to the society to subject the oral evidence to great scrutiny applying the test of normal prudent man, i.e. whether he would be willing to purchase the land at the rates proposed by the Court and on the touchstone of this, the Court should evaluate the evidence objectively and dispassionately to reach a finding on compensation.

13. Applying this principle to the facts of the instant case and subjecting the evidence adduced by the witnesses of the claimants to critical examination, this Court finds that each claimant must be growing 15 quintals of green-tuver per year per acre. The rate of green-tuver per quintal, at the relevant time, was Rs.778/-, which is quite evident from the contents of Exh.50. Thus,

each of the claimants was able to realise income of Rs.11,670/- per year from sale of green-tuver. As explained by the Supreme Court in **Special Land Acquisition Officer, Davangere vs. P.Veerabhararappa, A.I.R. 1984 SC 774**, 50% should be deducted towards the costs of cultivation. If 50% is deducted from Rs.11,670/- the net income, which was being realized by the claimants, would come to Rs.5,835/- per year per acre from the sale of green-tuver. As far as dry-tuver is concerned, the claim of the claimants was that the claimants were growing 14 quintals per year per acre. However, the learned Judge has come to the conclusion that 10 quintals of dry-tuver was being grown by the claimants on the acquired lands. On re-appreciation of the evidence adduced by the claimants, this Court is of the opinion that it would be reasonable to hold that the evidence indicates that 12 quintals of dry-tuver were being grown by each claimant per acre per year on the acquired lands. Evidence adduced by the claimants at Exh.51 would indicate that the price of dry-tuver prevailing at the relevant time was Rs.815/- per quintal. Meaning thereby each claimant was able to realise income of Rs.9,780/- per year per acre from the sale of dry-tuver. From the said amount, 50% will have to be deducted towards costs of cultivation and, therefore, Rs.4,890/- per year per acre would be net income, which was realised by the claimants from the sale of dry-tuver. The net income of green-tuver and dry-tuver comes to Rs.10,725/- per year per acre. An acre is equivalent to nearly 4000 square metres. Therefore, in order to arrive at

income from agricultural produce per square metre, the figure of Rs.10,725/- will have to be divided by 4000, which will bring the price of lands acquired at Rs.2.68 per square metre.

In catena of decisions, the Supreme Court has laid down the principle that while determining the market value of the lands acquired on the basis of capitalization principle, proper multiplier to be applied would be 10. However, there is no manner of doubt that the proper multiplier to be applied would depend on the facts of each case. In **Union of India & Another vs. Smt. Shanti Devi, A.I.R. 1983 SC 1190**, the Supreme Court has laid down that the proper multiplier to be adopted for the purpose of capitalization based on the rate of return at the relevant date, i.e. date of notification issued under Section 4(1) of the Act in the year 1962-63, would be 15% and that the courts were wrong in adopting the rule of 20 years' purchase. This principle has been followed subsequently in **Collector, Land Acquisition, Kangra & Ors. vs. Shiva Devi & Ors., 1987 (Supp.) SCC 526**. Though the Supreme Court has applied multiplier of 15 in the above mentioned case, this Court is of the opinion that interest of justice would be served if multiplier of 12½ is applied to the facts of this case. If multiplier of 12½ applied, then income derived from sale of tuver would be Rs.33.50 per square metre.

14. It is well settled that the market value to be determined for the purpose of compensation includes estimates of actual

speculative advances in the value of the lands in consequences of improvement made in the locality or in consequence of potentiality for any purpose. It also takes into account the use already made in similar lands in the locality or village and probable and advantageous use of similar lands capable of being put into such use. The claimant is entitled to the market value of his land including such actual speculative advance therein as had already taken place in consequence of improvements in the locality. Potential value of a land is something which is attached to the land on account of its topographic situation and similar other factors. The Reference Court has not at all considered the potential value of the acquired lands and, therefore, potential value of the acquired lands will have to be determined by this Court in the light of the evidence adduced by the parties. However, there is no manner of doubt that in view of the decision in **State of Haryana vs. Ram Singh, (2001) 6 SCC 254,** once the market value has been determined after taking into account potential value of the lands acquired, no further amount may be added on to it.

15. The testimony of witness Gamansang, recorded at Exhibit 59, indicates that Village Vagra is the headquarter of Vagra Taluka and the lands acquired were situated within the limits of the village. His testimony further shows that the lands acquired were fertile and only at a distance of 9 to 10 Kilometres from the lands acquired, Gandhar Oil Field of O.N.G.C., G.G.S., E.P.S., Oil & Gas

Pipelines, Oil Wells, etc. are situated. It may be mentioned that Central Process Facility is available at Gandhar where row-oil produced from Gandhar Oil Field is taken for purification. Further, a bottling plant has also been established by the Gas Authority of India Limited. His evidence also shows that Village Dahej is situated at a distance of 7 to 8 Kilometres from Village Vagra where giant industrial units such as IPCL, GACL, Cooper Plant, Pushpa Polymers, Chemical Port Jetty and Salt Industries are established. Moreover, at the distance of 4 to 5 Kilometres from the acquired lands, villages Vilayat, Bhersam, Argam are situated wherein GIDC Industrial Estates have been established by the Gujarat Industrial Development Corporation. What is evident from the testimony of Gamansang Bhavansang is that Vagra is a developed Taluka town where all facilities such as banks, cotton federation, milk society, Taluka Kharid-Vechan Sangh, etc. are available. Paragraph 10, which forms part of cross-examination of this witness would indicate that the village has also facilities of Telegraph Office, Post Office, Telephone Exchange, Panchayat Office, etc.

The evidence of witness Harishchandra Kanaiyalal Shah recorded at Exh.140 would indicate that he was examined on behalf of the original opponent No.3, i.e. acquiring body. In paragraph 5 of his testimony, this witness has admitted that it is true that large industrial projects are situated in Vagra Taluka wherein Wellspun, IPCL, Birla Copper, GCEL, GAIL, ONGC Wells, GIDC of Vilayat

Village and Port are situated. He has further admitted that it is true that the market value of the lands situated near *gamtal* is more. What is stated by the witness is that Vagra is main village of Taluka Vagra and that in Vagra Village, there are government, semi-government and central government offices. It is also admitted by the witness that the lands acquired are situated on Bharuch-Vagra road and they get direct entry.

Witness Parsottambhai Haribhai Chotaliya examined on behalf of the acquiring body at Exhibit 141, has stated in his cross-examination by the learned advocate for the claimants that it is true that the lands acquired are nearer to *gamtal* and there is Railway Station in Vagra, which is a narrow gauge line from Samni to Dahej. What is mentioned by this witness in cross-examination is that Vagra is a headquarter of Taluka and that the main business of village people is agriculture.

16. On re-appreciation of evidence adduced by the witnesses, this Court is of the opinion that there is no manner of doubt that the lands acquired had potential value for residential and commercial use. In view of the industrial developments, which had taken place before the acquisition proceedings were initiated and nearness of the acquired lands to the Railway Station, etc., this Court is of the opinion that potential value of the lands acquired will have to be assessed at 20% of Rs.33.50 per square metre, which is the price determined by this Court from the sale of

agricultural produces grown by the claimants. 20% of Rs.33.50 ps. would come to Rs.6.70 ps. per square metre. The Supreme Court has emphasized in several reported decisions that 1/3 should be deducted from potential value of the lands towards the cost which may be incurred by the occupants for developing the lands. If 1/3 amount is deducted from Rs.6.70 ps., the amount payable to the claimants as compensation under the head of building and industrial potentiality would come to Rs.4.47 ps. Thus, total compensation payable to the claimants would be Rs.37.97 ps. per square metre. The Reference Court in this case has awarded compensation payable to the claimants at Rs.38/- per square metre, which cannot be regarded as excessive at all.

17. Thus, on re-evaluation of evidence adduced by the parties, this Court is of the opinion that a just award has been rendered by the Reference Court and price per square metre is correctly arrived at after applying the principle of law to the proved facts. Therefore, First Appeal Nos.1365 of 2003 to 1375 of 2003 filed by the acquiring body will have to be dismissed.

18. Coming to First Appeal Nos.90 of 2004 to 100 of 2004 filed by the claimants for claiming enhanced compensation, this Court is of the opinion that no ground at all is made out by the claimants for awarding more compensation than one awarded by the Reference Court. Except claiming higher rate of compensation at the rate of Rs.50/- per square metre, no reliable evidence could

be adduced by the claimants to justify their claim for enhanced compensation. As observed earlier, the best evidence in form of sale transactions could not be brought on record by the claimants to enable the Court to determine the market value of the lands acquired as on the date of publication of notification under Section 4(1) of the Act. The claimants have claimed compensation on yield basis which, according to this Court, comes to Rs.38/- per square metre. As the claimants have failed to substantiate their claim for enhanced compensation, First Appeal Nos.90 of 2004 to 100 of 2004 are also liable to be dismissed.

The net result of the above discussion is that all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra